



Michael O. Leavitt  
Governor

Kathleen Clarke  
Executive Director

Lowell P. Braxton  
Division Director

# State of Utah

DEPARTMENT OF NATURAL RESOURCES  
DIVISION OF OIL, GAS AND MINING

1594 West North Temple, Suite 1210

PO Box 145801

Salt Lake City, Utah 84114-5801

801-538-5340

801-359-3940 (Fax)

801-538-7223 (TDD)

October 26, 2001

**CERTIFIED MAIL**

7099 3400 0016 8896 0006

Chuck Semborski, Environmental Supervisor  
Energy West Mining Company  
P. O. Box 310  
Huntington, Utah 84526

Re: Findings of Fact, Conclusions of Law and Order and Finalized Assessment for Notice of Violation N-01-7-1-1, Energy West Mining Company, Des-Bee Dove Mine, C/015/017, Outgoing File, Emery County, Utah

Dear: Mr. Semborski:

On October 3, 2001, an Assessment Conference was held to review the fact of violation and proposed assessment for state violation N-01-7-1-1 (The NOV), Des-Bee Dove Mine, Energy West Mining Company (Permittee). As a result of a review of all pertinent data and facts, including those presented in the Assessment Conference, the following shall constitute the findings of fact, conclusions of law and order and finalized assessment:

**Fact of Violation**

The NOV was written for:

“Failure to conduct coal mining reclamation activities in accordance with the approved plan. (Page 4-13 of the Des-Bee Dove Reclamation Plan.)

Failure to comply with the terms and conditions of the permit, all applicable performance standards and requirements of the state program.

Failure to remove, segregate and stockpile the best available plant supporting soil medium from within the permit area.”

The Permittee did not contest the fact of the violation.

### **The Assessment Conference**

The conference was convened approximately 2:00 p.m. on October 3, 2001, in room 1010, of the Department of Natural Resources' building. After establishing that this was the Assessment Conference for Notice of Violation (NOV) N-01-7-1-1, and noting that the Permittee had waived its option to question the fact of the violation, the Assessment Conference Officer asked that the Division present the basis for the NOV, to be followed by Permittee's perspective on the NOV. Following that discussion, the Division would present the Proposed Assessment of the violation, and the Permittee would provide comment on the Proposed Assessment.

The Division inspector, Ken Wyatt gave a power point presentation that included photographs of those portions of the Des-Bee Dove Mine where the violation occurred. Mr. Wyatt provided language from his inspection reports (between March and June, 2001) that substantiated enumeration of his concerns to the Permittee that topsoil salvage as contemplated in the approved Mining and Reclamation Plan (MRP), needed to be conducted on final reclamation. After providing language from the MRP, Mr. Wyatt used photographs to document that the approved soil salvaging techniques were not being followed during the reclamation operation. Basically, these failures consisted of not salvaging pad out slope materials identified in the MRP as substitute topsoil, and placement of spoil on pads, the upper portions of which had also been identified as substitute top soil sources. Since the plan was moot on other substitute topsoil borrow areas, Mr. Wyatt's concern was that failure to follow the plan would jeopardize the reclamation effort at Des-Bee Dove. Mr. Wyatt's presentation described a May 30, 2001, conference call held between the Permittee and the Division wherein his concerns regarding the operator's failure to salvage substitute topsoil were discussed. The Division noted that the Permittee continued to cover potential top soil borrow areas with spoil, notwithstanding Permittee's agreement to discontinue this practice in the May 30 conference call. Photographs taken June 26, 2001, substantiate this practice.

The Permittee, represented by Chuck Semborski and Dennis Oakley, stated that changes to the MRP including salvage of coal from the Tipple Pad, and the unanticipated large rocks found after excavation commenced precluded salvage of the upper 18-24 inches of substitute topsoil materials found on certain pad out slopes as required by the MRP. Other reasons for not following the MRP included perceived stability concerns, and possible conflicts in the MRP that inferred no post- reclamation changes in surface configuration on certain pads notwithstanding the fact that the MRP designated some of these pads as borrow areas for substitute topsoil. Mr. Semborski provided a history of mining at Des-Bee Dove, noting that much of the activity contributing to fill and pre-reclamation surface configuration was unregulated, and therefore some discretion to amending the plan during reclamation operations should be afforded the Permittee. The Permittee's representatives also noted that materials removed from the pad out slopes much more closely resembled coal waste than "growth media" and justified not salvaging some of these materials on that basis.

### **The Assessment**

Pamela Grubaugh-Littig, Assessment Officer for the Division, read the assessment for Notice of Violation N-01-7-1-1 (copy attached). Section V., the (proposed) assessment summary reads as follows:

Notice of Violation, N-01-7-1-1.

		<b>Proposed</b>
I.	Total History Points	0
II.	Total Seriousness Points	
	Probability of Occurrence	18
	Damage Points	15
III.	Total Negligence Points	25
IV.	Total Good Faith Points	-3
	Total Assessed Points	55
<b>Total Proposed Fine</b>		<b>\$1200</b>

The Permittee's representatives stated their opinions that there was a difference between substitute topsoil and the coal fines they encountered during excavation, and that the realities of these differences were not adequately reflected in the Proposed Assessment under Seriousness and Negligence.

Mr. Semborski and Mr. Oakley also noted that the same day the NOV was issued, the project manager was contacted and ordered to cease placement of coal fines and waste on a pad of which the surface portions were designated as topsoil substitute areas in the MRP.

### **Findings**

1. The fact of the violation was not appealed by the Permittee.
2. The Permittee is responsible for conducting coal mining and reclamation operations under the terms and conditions of an approved Mining and Reclamation Plan.
3. The Utah Coal Regulatory Program affords a means to modify a Mining and Reclamation Plan.
4. The Utah Coal Regulatory Program requires identification of adequate topsoil or topsoil substitute materials before commencement of mining and reclamation operations.
5. The Permittee had reason to believe that field conditions encountered after commencement of reclamation operations dictated a modification of the MRP.
6. The Division's inspection reports between March and June 2001, documented that the Permittee was not following the approved MRP.
7. The Permittee ignored the requirements of the MRP with respect to salvage of topsoil, and did

not formally acknowledge the need to identify, for purposes of the MRP, new topsoil or substitute topsoil borrow areas until a May 30, 2001, conference call with the Division.

8. Failure to follow the MRP with respect to utilizing substitute topsoil materials identified therein does not relieve the Permittee from the obligation to appropriately place adequate topsoil or topsoil substitutes during final reclamation.
9. Appropriate placement of topsoil materials during final reclamation may alleviate some of the concerns noted in the Damage section of the Proposed Assessment.
10. After issuance of the NOV, the operator acted promptly in suspending placement of coal fines on the bathhouse pad.

### Order

The Proposed Assessment for the NOV, N-01-7-1-1 is modified as follows:

Notice of Violation		N-01-7-1-1	
		Proposed	Final
V.	Total History Points	0	0
VI.	Total Seriousness Points		
	Probability of Occurrence	18	18
	Damage Points	15	8
VII.	Total Negligence Points	25	25
VIII.	Total Good Faith Points	-3	-6
	Total Assessed Points	55	45
Total Assessed Fine		\$1200	\$800

### Basis for changes to assessed points

History points: No change in assessment.

Seriousness:

Probability of Occurrence: No change in assessment. Unless a change to an approved mining and reclamation plan is approved by an authorized Division representative, the MRP provides the template for the conduct of coal mining and reclamation operations. Discussions between the Permittee and the Division might have developed an amended soil acquisition and handling procedure obviating the need for enforcement action. Lacking this, no change in probability of occurrence is warranted.

Damage points are reduced because of the operator's ultimate requirement to place appropriate topsoil or topsoil substitute regardless of failure to follow the approved MRP in the instance of this NOV.

**Negligence Points:**

No change in this category. The Permittee chose to ignore its requirement to modify the MRP, and unilaterally decided to not follow the MRP with respect to salvaging topsoil or substitute topsoil. As noted above, had the Permittee communicated to the Division its discovery that the assumptions made in the MRP regarding availability of substitute topsoil were incorrect, followed by discussions of a permit change, the need for enforcement action could have been avoided.

**Good Faith Points:**

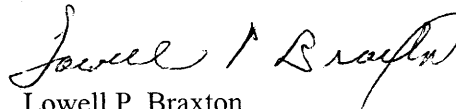
Three additional good faith points were awarded because of the Permittee's prompt action in suspending placement of coal fines on the bathhouse pad after issuance of the NOV.

**Appeal Provisions**

Within fifteen (15) days of your receipt of this letter, you or your agent may make a written appeal of this assessment to the Board of Oil, Gas and Mining. To do so, you must escrow the assessed civil penalties with the Division within a maximum of thirty (30) days of receipt of this letter, but in all cases prior to the Board Hearing. Failure to comply with this requirement will result in a waiver of your right of further recourse.

If no timely appeal is made, this assessed civil penalty must be tendered within thirty (30) days of your receipt of this letter. Please remit payment to the Division of Oil, Gas and Mining, mail c/o Vickie Southwick at the address listed above.

Sincerely,



Lowell P. Braxton  
Assessment Conference Officer

vs  
cc: Mary Ann Wright  
Pamela Grubaugh-Littig  
Price Field Office

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